IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8982 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHUSHALBHAI PUNJAJAI SOLANKI

Versus

K.R. KAUSHIK, POLICE COMMISSIONER

Appearance:

MR BHARAT BELSARE for Petitioner No. 1

MR JAYESH H BELSARE for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 21.06.2003

passed by the Police Commissioner, City of Ahmedabad, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 21.6.2003.

2. The grounds served upon the petitioner and as placed on record reveal that the detaining authority took into consideration the fact that an offence came to be registered against the petitioner on 15.2.2003 under Sections 66(1)(b), 65(e), 98, 99, 81 and 116(1) of the Bombay Prohibition Act, whereby according to the allegation, the petitioner was found in possession of 275 bottles of foreign liquor. The detaining authority further relied upon two in-camera statements as recorded by sponsoring authority on 19.6.2003 and on 20.6.2003 and verified by the detaining authority on 20.6.2003, revealing the incidents occurred on 10.5.2003 and 17.5.2003. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Mr.Bharat Belsare for the petitioner and learned AGP Mr.RM Chauhan for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by learned AGP is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, from rival contentions, it appears that the matter can be considered and be disposed of on the sole ground whether the delay has been caused in passing of the order . The chronology of events as relied upon by the detaining authority, as narrated above, starts from 15.2.2003 when a crime under the Bombay Prohibition Act came to be registered against the petitioner. Thereafter, the detaining authority also relied upon two in-camera statements recorded by the sponsoring authority, as aforesaid. If we consider the passing of the order on 21.6.2003, from the last date of registration of crime i.e. 15.2.2003, then the order is passed after delay of about four months, but in between, as aforesaid, on 19th June and 20th June, 2003, the sponsoring authority recorded in-camera statements, revealing the incidents of 10th of May and 17th of May, 2003. Apart from the delay caused in collecting the material i.e. in-camera statements recorded by the sponsoring authority on 19th and 20th of June, 2003,

after the date of registration of sole crime against the petitioner, the order passed on 21.6.2003 is passed with delay. In the circumstances, it appears that to give life to a solitary incident i.e. the crimes recorded against the petitioner on 15.2.2003, the in-camera statements came to be recorded as back as in June 2003. Though, this delay is attempted to be explained by the detaining authority in the affidavit-in-reply on the ground that the petitioner was arrested only on 19th June, 2003 but that fact would not be relevant in the facts and circumstances of the present case because the sponsoring authority could have collected the material against the petitioner without regard to the fact of arrest of the petitioner in the said crime. Therefore, the facts of this case are squarely covered by a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. In para 21, this Court observed as under :

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. The unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61."

Accordingly, the live link between the activities of the petitioner and the passing of the order is snapped by passing order with delay. The impugned order therefore is required to be set aside on this ground alone.

6. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 21.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if she is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair